

IN THE NORTH GAUTENG HIGH COURT, PRETORIA
(REPUBLIC OF SOUTH AFRICA)

CASE NO : 30729/05

In the matter between:

WRAYPEX (PTY) LIMITED

Plaintiff

and

ARTHUR BARNES

First Defendant

EDWARD MERVYN JOHN GAYLARD

Second Defendant

HELEN DUIGAN

Third Defendant

LISA ESSBERGER

Fourth Defendant

PLAINTIFF'S NOTICE OF APPLICATION FOR LEAVE TO APPEAL

BE PLEASED TO TAKE NOTICE that the Plaintiff intends applying for leave to appeal to the Full Bench of the North Gauteng High Court, alternatively to the Supreme Court of Appeal against the whole of the judgment of His Lordship Mr Justice Sapire given on the 6th day of DECEMBER 2010 and 9TH day of FEBRUARY 2011.

BE PLEASED TO TAKE NOTICE FURTHER that the findings of fact and/or rulings of law and the grounds upon which the appeal is based are the following:

1. His Lordship erred in not finding that the second statement of the Defendant Gaylard (hereinafter "Gaylard"), imputing illegality to the Plaintiff's activities, is defamatory *per se*.
2. His Lordship erred in not finding that Gaylard was estopped from proving that the activities on 25 July 2005 were illegal as a result of issue estoppel having been unsuccessful in interdicting the activities based on their alleged illegality.
3. His Lordship erred in not finding that Gaylard's studied ignorance amounted to recklessness in relation to the truth of the second statement rendered the defence of qualified privilege unavailable to him.
4. His Lordship erred in finding that Gaylard's third statements were not defamatory *per se* even though they impute illegality to the Plaintiff's activities.
5. His Lordship erred in applying the defence of reasonable publication as it is not available to individuals but only to the press.
6. His Lordship erred in finding that Gaylard reasonably believed the

third statements to be true.

7. His Lordship erred in not finding that Gaylard's studied ignorance amounted to recklessness in relation to the truth of the third statements.
8. His Lordship erred in not finding that the fourth statement by Gaylard is defamatory *per se*.
9. His Lordship erred in not finding that the Defendant Essberger (hereinafter "Essberger") made the statements recklessly and in studied ignorance.
10. His Lordship erred in not finding that Essberger's statements imputed illegality to the Plaintiff's activities which is defamatory *per se*.
11. His Lordship erred in finding that the statements by the Defendant Duigan (hereinafter "Duigan") were not defamatory *per se* despite imputing illegality to the actions of the Plaintiff.
12. His Lordship erred in finding that the statements made by Barnes were not proven.

13. His Lordship erred in finding that Barnes did not have the intent to defame.
14. His Lordship erred in rejecting the evidence of Hampson.
15. His Lordship erred in making credibility findings against Hampson.
16. His Lordship erred in not making a credibility finding against Barnes.
17. His Lordship erred in finding that the defence of qualified privilege were proven despite the defendants' recklessness as to the truth of the statements made by them.
18. His Lordship erred in finding that the Plaintiff had not proven a delay as a result of the statements made by the respective Defendants and in particular the statements made by Barnes.
19. His Lordship erred in finding that the Plaintiff had not established causality between the statements and the delay.
20. His Lordship erred in not finding that the statements were false, made in studied ignorance and therefore actionable.

21. His Lordship erred in granting attorney and client costs against the Plaintiff.
22. His Lordship erred in finding that the actions were so called "*Slapp-suits*".
23. His Lordship erred in granting attorney and client costs in circumstances where the legal representatives of the Defendants acted on the basis of an entitlement to costs recovered only if successful.

DATED at JOHANNESBURG on this the 1st day of MARCH 2011

(SGD) W SCROOBY

SCHWARZ-NORTH INCORPORATED
Plaintiff's Attorneys
c/o EDELSTEIN-BOSMAN INC
220/2 Lange Street
NEW MUCKLENEUK
PRETORIA
TEL : (012) 452-8900
FAX: (012) 452 8901/2
REF : W SCROOBY/RF/BM001116

TO:
THE REGISTRAR OF THE ABOVE
HONOURABLE COURT
PRETORIA

AND TO:
VAN DEN BOGERT GÖLDNER INC
Defendants' Attorneys
520 Spuy Street
SUNNYSIDE
PRETORIA

Van den Bogert Goldner Inc.	
520 Spuy Street, Sunnyside	
Pretoria 0001	
Received without Prejudice	
Signature.....	<i>[Signature]</i>
Date.....	01.03.2011
Time.....	11:16

RECEIVED COPY HEREOF ON THIS

DAY OF MARCH 2011

For Defendants' Attorneys